

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
and)
)
Ahmed Conde)
)
Plaintiff-Intervenor)
)
v.)
)
EBY-BROWN COMPANY, LLC)
)
)
)
Eby-Brown.)
_____)

CIVIL ACTION NO.
1:06-cv-1083-SEB-JMS

CONSENT DECREE

This action was instituted by the Equal Employment Opportunity Commission (“Commission”) under the authority granted to it under Section 706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1). The Commission’s action was brought to correct alleged unlawful employment practices on the basis of race, color, national origin and retaliation. Specifically, the Commission alleged in its Complaint that Eby-Brown Company, LLC allowed Ahmed Conde to be subjected to harassment based on his race, color, and national origin and subsequently discharged him in retaliation for opposing such practices and participating in proceedings under Title VII.

The Commission and Eby-Brown Company, LLC hereby stipulate to the jurisdiction of the Court over the parties and the subject matter of this action.

The parties have advised the Court that they desire to resolve the remaining allegations in the Complaint without the burden, expense, and delay of further litigation.

It is therefore the finding of this Court, made on the pleadings and the record as a whole, that: (1) the Court has jurisdiction over the parties and the subject matter of this action; (2) the purpose and provisions of Title VII will be promoted and effectuated by the entry of this Consent Decree; and (3) this Consent Decree resolves all the matters in controversy between the parties as provided in paragraphs 1 through 14 below.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

1. This Consent Decree, being entered with the agreement of the parties for purposes of settlement, shall not constitute adjudication on the merits of this lawsuit and shall not be construed as an admission by Eby-Brown Company, LLC, and Eby-Brown Company, LLC, denies any violation of Title VII or any other executive order, law, rule, or regulation.

2. Eby-Brown agrees that it will not discriminate against employees on the bases of race, color, or national origin and will maintain a work environment for all employees that is free from harassment based on race, color, and national origin.

3. Eby-Brown agrees that there will be no discrimination or retaliation of any kind against any person because of opposition to any practice made unlawful under Title VII, or because of the filing of a charge, the giving of testimony, assistance, or participation in any manner in an investigation, proceeding or hearing under Title VII.

4. Upon receipt of a release signed by Ahmed Conde, in full settlement of all claims, Eby-Brown agrees to pay Ahmed Conde or his heirs and assigns in the event of his death, \$100,000.00 as damages in settlement of his claim. Of this amount, \$90,000.00 shall be paid as punitive and compensatory damages and an IRS Form 1099 will be issued to him; \$10,000.00

shall be paid to Ahmed Conde, less applicable payroll taxes and shall be treated for tax purposes as wages for which an IRS Form W-2 shall be issued to Ahmed Conde. Eby-Brown Company, LLC agrees not to deduct from the punitive and compensatory damage settlement amount of \$90,000.00 the amount of the employer's share of any costs, taxes or social security required by law to be paid by Eby-Brown. All payments shall be made by check(s) and made payable to Ahmed Conde and Swaray Conteh and sent to his counsel, Swaray Conteh.

5. Eby-Brown agrees to post the Notice of Non-Discrimination Policy attached as Appendix A to this Decree in a conspicuous place on its premises. Said notice shall remain posted throughout the term of this Decree.

6. Within thirty (30) days of the date of entry of this Decree, Eby-Brown agrees to implement a personnel policy prohibiting race, color, and national origin harassment in the workplace. Said policy has been agreed upon by the parties and is attached as Appendix B. Eby-Brown agrees that the policy will be included in an employees' manual or other printed memorandum which will be distributed to each employee. Eby-Brown agrees that the policy prohibiting race, color, and national origin harassment and procedures for reporting incidents of harassment will be explained to each employee at the time he or she receives the written copy of the policy.

7. Eby-Brown agrees to submit reports to EEOC detailing its compliance with this decree. Within sixty (60) days of the date of this Decree, Eby-Brown will certify to the EEOC Regional Attorney that the distribution and explanation of the policy have been completed and provide EEOC with a copy of the personnel manual or memorandum containing the policy prohibiting harassment. In addition, two (2) annual reports shall be submitted during the term of this decree. The first report shall be due on December 31, 2007 and the second report shall be

mailed to the Commission no later than December 31, 2008. The reports shall include the following information for the twelve (12) month period preceding the report: a description of any and all verbal or written complaints of race, color, or national origin harassment received by the company or any of its managers or supervisors from any employee, the name and position of the complainant and the disposition of the complaint, including any discipline administered as a result of the complaint. Reports shall be sent to the attention of Laurie A. Young, Regional Attorney, or her successor, Equal Employment Opportunity Commission, 101 W. Ohio Street, Suite 1900, Indianapolis, Indiana, 46204.

8. Eby-Brown has provided training to its managers and supervisors regarding race, color, and national origin discrimination and retaliation.

9. Eby-Brown agrees to eliminate from the record of Ahmed Conde all references to his charges of discrimination and participation in this suit and shall make no mention of such charges or participation in the event Eby-Brown is contacted for references by Mr. Conde's prospective employers. This provision survives the expiration of this Consent Decree.

10. Eby-Brown Company, LLC agrees that the Commission may review compliance with this Decree. As part of such review, the Commission may inspect the premises, interview employees, and examine and copy documents, upon reasonable advance notice to Eby-Brown.

11. In the event that the Commission alleges that a violation of this Decree has occurred, prior to exercising any remedy provided by law, the Commission will give notice to Eby-Brown in writing thereof, specifically identifying the alleged violation. Eby-Brown will have thirty (30) days in which to investigate and respond to the allegation. Thereafter, the parties will have a period of thirty (30) days, or such additional period as may be agreed upon by them, in which to negotiate and confer regarding such allegation, before the Commission exercises any

remedy provided by law.

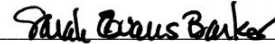
12. The Commission and Eby-Brown Company, LLC shall each bear their own costs and attorney fees.

13. The term of this Decree shall be for two (2) years following the date of the entry of this Decree.

14. RETENTION OF JURISDICTION BY COURT The Court will retain jurisdiction of this cause throughout the duration of this Decree for purposes of monitoring compliance with this Decree and entry of such further orders as may be necessary or appropriate.

12/20/2007

Date



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Copies to:

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APPENDIX A
**EMPLOYEE
NOTICE**

NOTICE OF NON-DISCRIMINATION POLICY

Federal law requires that there be no discrimination against any employee or applicant for employment because of the employee's race, color, religion, sex, national origin, age (over 40) or disability.

Federal law also prohibits race, color, and national origin harassment in the workplace.

Eby-Brown Company, LLC employees are expected to personally ensure that they do not engage in race, color, or national origin harassment at the workplace.

Eby-Brown Company, LLC will take disciplinary measures against those employees guilty of such harassment.

Eby-Brown Company, LLC supports and will comply with such Federal law in all respects and will not take any actions against employees because they have exercised their rights, reported an alleged violation under the law or have given testimony, assistance or participation in any investigation, proceeding or hearing conducted by the U. S. Equal Employment Opportunity Commission.

An employee has the right, and is encouraged to exercise that right, to report allegations of employment discrimination in the workplace. An employee may contact the U. S. Equal Employment Opportunity Commission for the purpose of filing a charge of employment discrimination.

Questions concerning this notice may be addressed to:

**Equal Employment Opportunity Commission
101 W. Ohio St., Suite 1900
Indianapolis, Indiana 46204-4203
Telephone: (317) 226-7212
EEOC 800 # 1-800-669-4000
TDD (317) 226-4162**

APPENDIX B

POLICY ON NON-DISCRIMINATION AND RACE, COLOR, AND NATIONAL ORIGIN HARASSMENT

It is the Company's policy and philosophy to treat its employees and applicants for employment fairly and without regard to race, color, sex, religion, national origin, age or disability. Both the state and federal government prohibit discrimination on any of these bases and there are state and federal agencies authorized to enforce the law should violations occur.

Discrimination against any employee or applicant based on any of these bases will not be tolerated. This policy applies to all employment practices including, but not limited to, recruiting, hiring, pay rates, training and development, promotions and other terms and conditions of employment and termination.

The Company also prohibits any form of harassment, joking remarks or other abusive conduct, directed at employees because of their race, color, sex, religion, national origin, age or disability.

Race, color, and national origin harassment is prohibited because it is offensive, insulting and inconsistent with the Company's policies, practices and management philosophy.

Any employee who feels subjected to discrimination or harassment of any kind should immediately report it to his/her supervisor or an officer of the Company. All such reports will be investigated thoroughly and, if the report has merit, disciplinary action up to and including discharge will be taken against the offender.

The employee may also contact the Equal Employment Opportunity Commission, 101 West Ohio Street, Suite 1900, Indianapolis, Indiana 46204, (317) 226-7212 with any questions concerning discrimination or harassment.